

STATE OF MICHIGAN
COURT OF APPEALS

DALE ROBERTS,

Plaintiff-Appellant,

v

STEVENS ENTERPRIZE, INC., d/b/a QUALITY
LAWN CARE,

Defendant-Appellee.

UNPUBLISHED

May 11, 1999

No. 203854

Wayne Circuit Court

LC No. 96-606007 NO

Before: Sawyer, P.J., and Bandstra and R.B. Burns*, JJ.

PER CURIAM.

Plaintiff slipped and fell on an ice- and snow-covered parking lot. The parking lot was owned by plaintiff's employer, who had hired defendant to clear the ice and snow and put down salt. Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition on the ground that defendant did not owe plaintiff a duty because the danger was open and obvious. We reverse and remand.

The general rule governing premises liability is that the premises owner has a duty to exercise due care to protect his invitee from dangerous conditions on his land. If, however, the dangers are known to the invitee or are so obvious that he could reasonably be expected to discover them, the invitor owes no duty to the invitee unless the risk of harm remains unreasonable despite its obviousness or the invitee's knowledge of it. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995); *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992).

Defendant's duty to plaintiff, if any, arose from defendant's obligations under a contract with plaintiff's employer and plaintiff's alleged status as a third-party beneficiary thereof, *Talucci v Archambault*, 20 Mich App 153; 173 NW2d 740 (1969), not from an invitor-invitee relationship. Whether defendant had such a duty and whether the open and obvious danger rule applies outside the context of an invitor-invitee relationship are issues that neither the parties nor the trial court have addressed and, accordingly, we decline to do so also. *Radtke v Everett*, 442 Mich 368, 397-398;

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

501 NW2d 155 (1993); *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997).

Assuming, as both parties have, that defendant was entitled to invoke the open and obvious danger rule to obviate a breach of duty, we conclude that the rule was improperly applied here. We agree with the trial court that the dangers of the ice- and snow-covered parking lot were open and obvious. However, “[c]ases finding that the risk of harm is unreasonable despite its obviousness or despite the invitee’s awareness of the condition . . . typically involve hazardous natural conditions such as accumulations of snow and ice or excessive mud. The risk to the invitee in such conditions has been held to be somehow more unavoidable than other conditions, thereby creating an exception to the open and obvious defense.” *Bertrand, supra* at 625-626 (Weaver, J., concurring in part and dissenting in part). As stated in *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975):

[W]e reject the prominently cited notion that ice and snow hazards are obvious to all and therefore may not give rise to liability. While the invitor is not an absolute insurer of the safety of the invitee, the invitor has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation. . . . As such duty pertains to ice and snow accumulations, it will require that reasonable measures be taken within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee.

Considering the prevalence of ice and snow accumulations during Michigan’s winters, we have concerns that the open and obvious doctrine provides apparently little defense under circumstances as are found in this case. However, we are compelled to follow the available Supreme Court authority on the question and conclude that summary disposition was inappropriately granted to defendants in this case.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Robert B. Burns